

Afghanistan assistance Clinic

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LEGAL MEMO IN SUPPORT OF MS. F-R’s AFFIRMATIVE APPLICATION FOR ASYLUM

Ms. Xx submits this application for asylum on the basis of her well-founded fear of persecution by the Taliban and Taliban associates in Afghanistan on account of her: 1) expressed and imputed political opinions (pro-US, gender equality, rule of law, her and her family’s anti-Taliban statements and actions); 2) membership in a particular social group (Fulbright Scholar); and 3) her race as an ethnic Tajik.

Ms. Xx submits extensive evidence about the threat of persecution that she faces as a highly educated female lawyer, university professor, and US-educated Fulbright Scholar who has openly demonstrated her political opinions in her academic achievements, professional work, and media and online activities. Ms. Xx further submits evidence of the threats and violence that her family has experienced in Afghanistan because of their anti-Taliban views as well as the Taliban’s attacks against Afghan citizens who are ethnically Tajik. Ms. Xx respectfully requests that her application for asylum be granted so that she may remain in the United States, where she is free to live, learn, and work without fear of persecution or serious bodily harm as has befallen her brother-in-law and brother.

Under the INA, an individual may qualify for asylum if they meet the definition of “refugee”, as defined in Immigration and Nationality Act § 101(a)(42). An applicant satisfies the refugee definition by showing a well-founded fear of future persecution on account of one of the enumerated grounds. 8 C.F.R. § 208.13(b)(2)(i). A well-founded fear may exist when there is as little as a one-in-ten chance of future persecution. *I.N.S. v. Cardoza-Fonseca*, 480 U.S. 421, 431 (1987). An applicant must show that the feared persecution would be on account of their race, religion, nationality, membership in a particular social group, or political opinion. *Matter of Mogharrabi*, 19 I. & N. Dec. 439, 447 (1987).

Ms. Xx meets the definition of “refugee” and is eligible for asylum. Her fear is well-founded because (i) she reasonably fears that if she is forced to return to Afghanistan, she will be subjected to physical harm, verbal attack, imprisonment, torture, or even death; and (ii) a reasonable person in her circumstances would also fear persecution if returned to Afghanistan. The persecution that Ms. Xx fears is on account of her political opinions, membership in a particular social group, and race.

I. Ms. Xx is a Female Lawyer and Professor Who Worked on Gender Equality and Peacebuilding Issues and Who Remains an Outspoken Critic of the Taliban’s Atrocities and Extremism While in the United States as a Fulbright Scholar.

\*Please refer to Ms. Xx’s declaration in support of asylum (Exhibit A).

II. Ms. Xx has a Well-Founded Fear of Future Persecution in Afghanistan on Account of Her Political Opinions, Membership in a Particular Social Group, and Ethnicity

Ms. Xx has a well-founded fear of persecution on account of her political opinions, membership in a particular social group, and race. Her fear is subjectively sincere and objectively reasonable. *Ramsameachire v. Ashcroft*, 357 F.3d 169, 178 (2d Cir 2004).

The evidence contained in this application presents extensive documentation of Ms. Xx’s genuine fear of returning to Afghanistan as an outspoken female who has worked on human rights issues and spent the past year studying in the United States without a male chaperone. Ms. Xx’s affidavit demonstrates her sincere fear that the Taliban would seek to silence her—including by killing her—if she were to return home, as the Taliban murdered her brother-in-law in February 2021. See Ms. Xx’s declaration in support of asylum (Exhibit A). Ms. Xx’s fear is objectively reasonable based on the Taliban’s documented track record of arresting, torturing, and killing its opponents, as outlined in Country Conditions Reporting in the Document Index.

Furthermore, the US government has recognized the danger to Ms. Xx and her family specifically. In August 2021, while the US military was evacuating Afghan citizens, the Department of State contacted Ms. Xx and other Fulbright students from Afghanistan to request information on family members as soon as possible. While the Department did not state the intended use of the information, the context at the time and the ongoing evacuation of at-risk Afghan citizens following the sudden collapse of the Afghan government strongly suggest that the information would be used to facilitate the safe passage of Ms. Xx’s and other families from Afghanistan. On 4 March 2022, the Fulbright Program administrator contacted Ms. Xx and other Afghan Fulbright Scholars finishing their course of study this spring and summer to notify them that the Department of State “will allow the following exceptional opportunities due to the current situation in Afghanistan and difficulty with return travel”. See both communications to Ms. Xx in Exhibits P and Q. This is objective evidence—from the US government no less—that Ms. Xx would be in danger if she went home. Offering Ms. Xx options besides returning to Afghanistan is an extraordinary acknowledgement in light of federal law that subjects her and similarly situated J-1 visa holders to a two-year home-country physical presence requirement. Immigration and Nationality Act, § 212(e).

In addition to her fears of being singled out for persecution by the Taliban, Ms. Xx also fears persecution based on the Taliban’s “pattern or practice” of persecuting similarly situated individuals, namely women, lawyers, those seen as promoting US and secular values, and Afghans who are ethnically Tajik. 8 C.F.R. § 208.13(b)(2)(iii). Private actors’ persecution can also be attributed to the Taliban through the actions of its associates and sympathizers, whom the Taliban government are “unable or unwilling to control”. The Taliban are unable or unwilling to control private actors if they condone the persecution or demonstrate a complete helplessness in protecting the victims. *Singh v. Garland*, 11 F.4th 106, 114 (2021).

Country conditions reporting indicate the Taliban have restricted the independence of lawyers, fired women from their jobs, closed girls’ schools, and, according to United Nations experts, are “institutionalizing large scale and systemic gender-based discrimination and violence against women and girls”. See Exhibit OO. At Xx University, from which Ms. Xx graduated and where she later taught, the Taliban removed pictures of all female professors and students from the facilites’ walls. The Taliban published an article on its website, “Feminism as a Colonial Tool”, and asserted that promoting women’s rights has “destructive effects on human society”. In November 2022, the Taliban decreed that the Afghanistan Independent Bar Association would now be a Taliban government entity, and the Taliban’s “Justice Minister” declared that only Taliban-approved lawyers could work in their Islamic courts, effectively revoking the licenses of approximately 2,500 lawyers, which almost certainly would include Ms. Xx were she in the country. See Exhibits MM (p.17, 50) and NN.

**a. Political Opinions**

Ms. Xx reasonably fears persecution on account of her political opinions because she has worked for non-governmental organizations that promoted women’s rights, a version of the rule of law that is not based on the Taliban’s extremist interpretation of Islam, and peacebuilding within Afghan society. Ms. Xx’s declaration, curriculum vitae, and letters from her prior supervisors document the values and causes that she openly advanced while in Afghanistan, which place her in direct opposition to the Taliban’s uncompromising ideology toward women, religious law, and domineering political power. Even if she were to return to Afghanistan and refrain from restarting any of her previous political activities, Ms. Xx and those closest to her genuinely believe that she would be targeted for persecution, or even killed, as outlined in her declaration in Exhibit A and letter of support from her academic advisor at the University at Buffalo in Exhibit Z.

Further, Ms. Xx has continued to openly express her opposition to the Taliban’s repression of women while in the United States, as documented in her appearances on Afghanistan International Television—available in her native Dari/Persian language to Afghan audiences around the world—and in videos for Western educational and legal organizations. See transcripts of her remarks in Exhibits GG, HH, and II.

Ms. Xx’s political opinions reflect the anti-Taliban opinions of her family members, for which the Taliban exacted violent retribution. Her brother-in-law was murdered by Taliban associates because he was unwilling to accede to a common Taliban tactic of forcibly demanding land under threat of violence and because he sought the protection of the Afghan legal system to protect him and his family, as verified in Afghan and Taliban court documents (Exhibit I) and in the statement from Ms. Xx’s sister (Exhibit H). As Human Rights Watch documented (see Exhibit MM, p.16), the Taliban established its own courts prior to seizing the Afghan government that relied on religious scholars to adjudicate cases or other dispute resolution mechanisms outside of the Afghan legal system, a process in which Ms. Xx’s family refused to participate. Due to Ms. Xx’s family’s refusal to participate in the Talibans courts, the Taliban warned Ms. Xx’s family that they would use violent measures against them, as documented in her declaration (Exhibit A). The Taliban targeted Ms. Xx’s father for arrest because they knew he worked for her uncle’s nongovernmental organization that educated Islamic leaders, in defiance of the Taliban’s orthodoxy. In a sign of her family’s political reputation, Ms. Xx was verbally accosted while taking a university exam by an Islamic law professor who questioned her about this same uncle, calling her uncle “secular” as a slur. Note that all of these incidents—and additional ones documented in Ms. Xx’s declaration—occurred prior to the Taliban seizure of the Afghan government; since then, the Taliban’s freedom to persecute its political opponents such as Ms. Xx and her family has increased exponentially and unfettered.

This stream of Taliban threats against Ms. Xx’s family for their willingness to defy the Taliban has not abated, as Ms. Xx documented in her declaration. When the Afghan democratic government fell in August 2021, two of her siblings and their families had to flee the country because of their work with Western militaries. The widow of Ms. Xx’s brother-in-law (her sister) and their children also had to be evacuated from the country in August 2021 because of continued Taliban threats against their lives. Later in 2021, Taliban members shot at and tried to kidnap Ms. Xx’s brother at the family’s home in Xx province, an incident that served as the latest in a series of brazen attempts to silence and punish Ms. Xx’s family for their willingness to defy Taliban demands and work in pursuit of justice and human rights. Pictures of the bullet-scarred house are at Exhibit O. At a minimum, the Taliban has shown a complete helplessness in protecting Ms. Xx’s family from violence committed by its members or sympathizers, and thus, this persecution can be attributed to the Taliban. Country conditions reporting indicates at least 60 Taliban militants have been arrested since the Taliban took power for crimes such as raiding homes and robbery, an indication of the government’s inability or unwillingness to control associated entites that are continuing to target individuals such as Ms. Xx and her family. See Exhibit MM, p.17.

**b. Membership in a Particular Social Group**

For an entity to be considered a particular social group as an enumerated ground for granting asylum, the entity must be: 1) composed of members who share a common immutable characteristic; 2) defined with particularity; and 3) socially distinct within the society in question. *Paloka v. Holder*, 762 F.3d 191, 196 (2d Cir 2014).

Here, Afghan Fulbright Scholars meet the criteria to be considered a particular social group. The characteristic is immutable: once an Afghan citizen has been selected as a Fulbright Scholar, they retain that distinction for life and prominently cite it as a professional credential, even long after their time in the program has ended. Second, Afghan Fulbright Scholars can be defined with particularity. According to the US Department of State, 109 Afghan citizens began their studies in the United States in August 2021, of which Ms. Xx was one. Even across the history of the Afghan Fulbright Scholars program since 2003, there have only been 950 Afghan students selected, which demonstrates the group’s particularity. See Exhibit RR. Finally, Afghan Fulbright Scholars are socially distinct in Afghanistan because being selected for the program is widely celebrated as a prestigious achievement, and it typically accelerated an individual’s career prospects, prior to the fall of the Afghan government. Former Fulbright Scholars often served as leaders of Afghan political society, including as cabinet members and in other high-level government roles. See Exhibit SS.

Ms. Xx’s status as a Fulbright Scholar makes her fear of persecution subjectively and objectively reasonable. Serving as a Fulbright Scholar is an extension of her political opinions because the Fulbright Program promotes a more peaceful, equitable, inclusive, and just world.[[1]](#footnote-1) Ms. Xx proudly shared her status as a Fulbright Scholar within Afghanistan, which enhances her visibility as a member of this particular social group. In her declaration, she attested to reactions that she received from her family and friends to her selection as a Fulbright and impending studies in the US, including concern for her safety if she returned to Afghanistan and disapproval for studying in a Western country. She displays her status as a Fulbright Scholar in her Twitter and LinkedIn profiles, as documented in Exhibits BB and LL, which further shows that membership in this particular social group is socially distinct.

**c. Race**

Ms. Xx has a genuine fear of persecution on account of her race because of her knowledge of the Taliban’s targeting of Tajiks in Afghanistan, as discussed in her declaration. Her Afghan national identity card, contained in the Document Index, displays her ethnicity as Tajik. Her native language is Dari/Persian, and she is not fluent in Pashto, the Taliban’s dominant language, which all but confirms her status as a Tajik the moment she begins speaking. She has seen videos and press reports of the Taliban targeting and killing individuals because they are Tajik, which has heightened her fear that she may be killed for no other reason than her racial status.

Ms. Xx’s fear of persecution based on her race as ethnically Tajik is objectively reasonable based on evidence in Country Conditions Reporting that the Taliban has a pattern or practice of persecuting Afghan citizens who are Tajik. See Exhibits QQ and UU.

III. Ms. Xx is Unable to Internally Relocate

It is not reasonable to expect Ms. Xx to relocate within Afghanistan because the Taliban are the Afghan government and control the country. When the persecutor is a government, federal regulations presume that internal relocation is not reasonable. 8 C.F.R. § 208.13(b)(3)(ii). The Taliban now own biometric data that the previous Afghan government collected, including photographs, racial status, occupational status, and names of relatives. Human Rights Watch research suggests the Taliban have already used this data to exact revenge on its opponents since seizing power. See Exhibit TT. As a lawyer, university student and professor, and employee of human rights groups who interacted with the former Afghan and Western governments, Ms. Xx’s personal information almost certainly is accessible to the Taliban and could be used to identify her anywhere in the country.

IV. Conclusion

Based on the above, Ms. Xx satisfies the refugee definition in federal law and meets all legal requirements to receive a grant of asylum. Please process this case and grant her asylum request as early as possible.

1. United States Department of State Bureau of Educational and Cultural Affairs, “Fulbright Program Overview”, https://eca.state.gov/fulbright/about-fulbright/fulbright-program-overview [Accessed 19 April 2022]. [↑](#footnote-ref-1)